

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11168 OF 2015

LAXMANGIRI GURUSANT JANARDHAN SWAMI
VERSUS
TUKARAM MARUTI MAGAR

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Advocate for Petitioner : Mrs. Mhase Madhaveshwari S.

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CORAM : V. K. JADHAV, J.
DATED : 21st JANUARY, 2016

PER COURT:-

1. None appears for the respondent-sole, though served.
2. The petitioner is original plaintiff No.1 in R.C.S. No. 124 of 1996 instituted for declaration that sale deed dated 25.6.1985 as false and bogus document and also for recovery of possession. During pendency of suit, original plaintiff No.2 died. Consequently, the petitioner has filed applications at Exh.124 and 126 before the trial court. Application at Exh.124 is filed for condonation of delay in bringing L. Rs. on record and application Exh.126 is filed with prayer that the name of plaintiff No.2 Gopalgiri be deleted as he died issue-less and the present petitioner alone can continue with suit. The learned Judge of the trial court has rejected the application Exh.124 by impugned order dated 31.7.2015.
3. Learned counsel for the petitioner submits that the suit property Gat No.46, admeasuring 2 H 81 R was purchased by the petitioner and

deceased plaintiff No.2 Gopalgiri, under registered sale deed dated 6.8.1981. The said property was purchased for the purpose of carrying out some social work in the name of Sant Janardhan Swami Maharaj. Learned counsel further submits that the respondent-defendant is from the same village, who also participated in the said work. However, the respondent-defendant has prepared a bogus sale deed and shown that the suit land is purchased from the petitioner-plaintiff on 25.6.1985 in the name of Shri Sant Janardhan Swami Maharaj Sansthan, proposed Trust Upkhed. The present petitioner and deceased plaintiff No.2 Gopalgiri thus constrained to institute the suit for declaration, as stated above. Learned counsel further submits that plaintiff No.2 Gopalgiri died issue-less and he had no legal representatives as such. Learned counsel further submits that in view of provisions of Order XXII Rule 4-A of C.P.C. the Court may proceed in absence of the person representing the estate of the deceased person. Learned counsel submits that in this case, present petitioner, who is original plaintiff No.1 representing the estate and there is no question of causing any delay as such for filing application at Exh.126.

4. It appears from the impugned order that the trial court has not considered the provisions of Order XXII Rule 4-A of C.P.C. If the plaintiff No.2 died issue-less and if the present petitioner can continue with the suit, there is no question of filing any application as such and the trial court may proceed with the suit in absence of legal

representatives of deceased plaintiff No.2. Even in the case in hand, there is no question of bringing on record the legal representatives, representing the estate of deceased-plaintiff No.2, since the estate was purchased for certain social cause and there is no personal interest in the property purchased by the petitioner alongwith deceased-plaintiff No.2. In view of this, order passed by the trial court below Exh.124 is unwarranted and uncalled for. Hence, the following order:-

ORDER

- I. Writ petition is hereby allowed.
- II. The order dated 31.7.2015 passed by the learned Civil Judge, Junior Division, Chalisgaon below Exh.124 in Regular Civil Suit No. 124 of 1996 is hereby quashed and set aside. Application Exh.126 is hereby allowed in terms of its prayer clauses.
- III. The Trial Court to proceed with the suit in accordance with law.
- IV. Writ petition is disposed of accordingly. No costs.

(V. K. JADHAV, J.)

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